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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) AU920030792US1	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u> </u> filed 01-17-2007 Signature <u>/Louise Fay/</u> Typed or printed name <u>Louise Fay</u>		Application Number 10/697,899	Filed 2003-10-30
		First Named Inventor Best et al.	
		Art Unit 2163	Examiner Binh Van Ho
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the		<u>/Theodore D. Fay III/</u>	
<input type="checkbox"/> applicant/inventor.		Signature	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/98)		<u>Theodore D. Fay III</u>	
		Typed or printed name	
<input checked="" type="checkbox"/> attorney or agent of record. <u>48,504</u>		<u>972-385-8777</u>	
Registration number		Telephone number	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34.		<u>01-17-2007</u>	
Registration number if acting under 37 CFR 1.34 <u> </u>		Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			

<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Best et al.**

Serial No.: **10/697,899**

Filed: **October 30, 2003**

For: **Method and Apparatus For
Increasing Efficiency of Data
Storage in a File System**

§ Group Art Unit: **2163**

§

§ Examiner: **Binh Van Ho**

§

§ Attorney Docket No.: **AUS920030792US1**

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PATENT TRADEMARK OFFICE
CUSTOMER NUMBER

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Respectfully submitted,

/Theodore D. Fay III/

Theodore D. Fay III

Registration No. 48,504

Duke W. Yee

Registration No. 34,285

YEE & ASSOCIATES, P.C.

P.O. Box 802333

Dallas, Texas 75380

(972) 385-8777

ATTORNEYS FOR APPLICANTS

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Group Art Unit: **2163**

Examiner: **Binh Van Ho**

Attorney Docket No.: **AUS920030792US1**

Commissioner for Patents
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**REASONS IN SUPPORT OF APPLICANTS' PRE-APPEAL
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program.

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to Deposit Account No. 09-0447.

REMARKS

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed October 18, 2006. The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

The pre-appeal brief review is needed because the rejection is clearly in error. The Examiner rejects claims 1-22 as anticipated by *Crow et al.*, Versatile Indirection In an Extent Based File System, U.S. Patent Application Publication 2004/0254907 (December 16, 2004) (hereinafter "*Crow*").

I. Response to Rejection

Applicants only address claim 1, as the errors in the rejection of claim 1 will carry forward to the rejection of all other claims. *Crow* does not anticipate claim 1 because *Crow* does not teach all the features of claim 1. Claim 1 is as follows:

1. A method in a data processing system for storing data in a file system, the method comprising:
determining whether space is available in an inode for a file in the file system; and
responsive to space being available, storing the data in the inode.

Crow does not anticipate claim 1 because *Crow* does not teach the feature of, "determining whether space is available in an inode for a file in the file system and responsive to space being available, storing the data in the inode" as recited in claim 1. The Examiner asserts otherwise, citing *Crow*'s figure 8C.

According to figure 8C, in step 132, "the operating system first determines whether at least one empty row remains for writing a new extent to the file's inode." *Crow*, paragraph 41 (emphasis added). In step 146, the new file fragments are stored in newly added data block and not in the inode. The inode stores the extent which contains a pointer that indicates both the logical volume and a physical offset of the data block. *Crow*, paragraphs 33-34. Therefore, figure 8C does not teach the features of claim 1 because figure 8C determines whether there is space in the inode for an "extent" and not for a file in the file system as recited in claim 1. Furthermore, figure 8C discloses storing

the data in a newly added data block instead of storing the data in the inode as recited in claim 1. Additionally, *Crow* does not *determine whether space is available in the inode*, as required by claim 1, because *Crow* only determines whether an empty row remains for writing an *extent* to the file's inode – not whether space is available for the file.

Nevertheless, the examiner also cites paragraphs 48 and 53 as teaching these claimed features. However, paragraph 48 only discusses an application requesting more data blocks for a file. If there are more data blocks contiguous to the physical location of the previous segment of the file, then the operating system allocates a new string of blocks immediately following the physical location of the previous segment. If no blocks contiguous to the previous segment are available, the operating system again searches for a logical volume with a larger than average contiguous region of available data blocks (step 162). However, nothing in paragraph 48 discloses the features of claim 1. Therefore paragraph 48 is completely irrelevant to the claimed feature, “determining whether space is available in an inode *for a file in the file system and responsive to* space being available, storing the *data* in the inode,” as recited in claim 1.

Similarly, paragraph 53 discloses the use of an inode to store a data file. However, nothing in paragraph 53 or any other portion of *Crow* teaches the precondition to storing the data in the inode as recited in claim 1. In other words, *Crow* does not teach, “*determining whether space is available in an inode for a file in the file system and responsive to* space being available,” as recited in claim 1. *Crow* does not perform a pre-determination prior to storing the data in the inode. *Crow* performs a post-determination. *Crow* performs the function of storing the data in the inode and “when the size of the data file surpasses the limited space available in the inode, the operating system converts the inode to an inode for storage of lists of extents.” *Crow*, paragraph 53.

Additionally, *Crow* uses the inode to store a data file, but does not store the data file in the inode itself. *Crow* uses the inode to store the data file in that an extent to the file's inode is written, but the data itself is not stored in the inode. Therefore, paragraph 53 of *Crow* does not teach, “*determining whether space is available in an inode for a file in the file system and responsive to* space being available, storing the data in the inode,” as recited in claim 1.

II. Rebuttal to Examiner's Response

In response, vis-à-vis claim 1, the examiner states that:

The Examiner respectfully disagreed with the Applicant's argument above; since Crow discloses (paragraph [0044], [0047] and [0048]) "the operating system determines the maximum number of available contiguous blocks in each logical volume from data in the volume's header or from information in a superblock spanning the entire storage system."

Final office action of October 18, 2006, p. 5.

The examiner makes a single counter argument based on the above-cited quotation. The examiner does not address any of the specific points raised by Applicants.

However, the one quotation cited by the examiner deals with the asserted feature in *Crow* that the operating system determines the maximum number of available contiguous blocks in each logical volume from data in the volume's header, or from information in a superblock. However, this quotation has utterly nothing to do with the claimed feature.

According to Applicant's specification, p. 8, ll. 24-25, an inode is a data structure or record used to store information *about* files (emphasis supplied). This definition comports with what one of ordinary skill in the art knows an inode to be. Even if true, the fact that the operating system determines the maximum number of available contiguous blocks in each logical volume or from information in a superblock has little to do with the claimed feature of, "determining whether space is available in an inode for a file in the file system," as in claim 1. Even if a superblock were somehow the equivalent of an inode, *Crow* would then only be teaching that the superblock contained information *about* files. However, *Crow* does not teach *determining* whether space is available *in* the inode for a file in the file system. *Crow* does not teach that actual data is stored in the inode, as claimed. Therefore, the examiner has failed to rebut the fact that *Crow* does not teach all of the features of claim 1.

Instead, as shown above, *Crow* clearly does not teach the feature of, "determining whether space is available in an inode for a file in the file system," as in claim 1. Therefore, the anticipation rejection of claim 1 is clearly in error. Accordingly, the rejection should be withdrawn.

The remaining claims all contain features similar to those presented in claim 1. Therefore, the rejection of the remaining claims is also clearly in error.

The Pre-Appeal Brief Conference Panel is invited to call the undersigned at the below-listed telephone number if in the opinion of the Panel such a telephone conference would expedite or aid the prosecution and examination of this application. Allowance of the claims is requested.

DATE: January 17, 2007

Respectfully submitted,

/Theodore D. Fay III/

Theodore D. Fay III
Reg. No. 48,504
Yee & Associates, P.C.
P.O. Box 802333
Dallas, TX 75380
(972) 385-8777
Attorney for Applicants